

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ROBERT W. JOHNSON,  
APPELLANT  
vs.**

**STATE OF MISSOURI,  
RESPONDENT**

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DOCKET NUMBER WD74813

DATE: JUNE 11, 2013

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Appeal from:

The Circuit Court of Livingston County, Missouri  
The Honorable Thomas N. Chapman, Judge

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Appellate Judges:

Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

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Attorneys:

Samuel E. Buffaloe, for Appellant

Evan J. Buchheim, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ROBERT W. JOHNSON, APPELLANT**

**v.**

**STATE OF MISSOURI, RESPONDENT**

WD74813

Livingston County, Missouri

Before Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Robert Johnson appeals the denial of his Rule 24.035 motion for post-conviction relief after an evidentiary hearing. Johnson claims that his guilty pleas to three counts of selling drugs within 2,000 feet of a school, section 195.214, RSMo, were involuntary, unknowing, and unintelligent due to his counsel's ineffective assistance and the trial court's failure to establish a factual basis or the plea. The judgment is reversed and remanded.

**REVERSED AND REMANDED.**

Division One holds:

The defendant's knowledge of his proximity to a school when he sold drugs was an element of a section 195.214.1 prosecution when Johnson committed the offenses, pled guilty and was sentenced. The denial of Johnson's 24.035 motion, based on the court's erroneous finding that it was *not* an element, is reversed, and the cause is remanded for the motion court to make factual findings as to: Johnson's knowledge of his distance from the school when he sold drugs; whether he knew all of the elements of the crime to which he was pleading guilty; and, if not, whether he would have gone to trial had he known the proper elements of the crime. Sentencing counsel was not ineffective for not discussing the court's proposed alternative sentence with Johnson, in that Johnson twice rejected the court's offer because it did not involve probation.

**Opinion by: Victor C. Howard, Judge**

Date: June 11, 2013

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